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SUMMARY RECORD OF THE 29th MEETING

Chairman:	Mr. CHATURVEDI (Vice-Chairman)	(India)
later:	Mr. LAMPTEY (Chairman)	(Ghana)

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In the absence of Mr. Lamptey (Ghana), Mr. Chaturvedi (India), Vice-Chairman, took the Chair.

The meeting was called to order at 10.35 a.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (A/49/22 and A/C.6/49/L.4)

1. Mr. KIRSCH (Canada), Chairman of the Working Group on the question of responsibility for attacks on United Nations and associated personnel, introducing the report of the Working Group contained in document A/C.6/49/L.4, said that the Working Group had been established in response to widespread concerns over the safety of United Nations personnel, prompted by a significant increase in the number and gravity of attacks against United Nations peace-keepers and other personnel. In his report on the matter, contained in document A/48/349-S/26358, the Secretary-General had recommended the elaboration of a new international instrument relating to the security on safety of United Nations forces and personnel.

2. On the initiative of New Zealand, the item had been included in the agenda of the forty-eighth session of the General Assembly and two draft conventions tabled by Ukraine and New Zealand. Following intensive, open-ended negotiations, which had been well attended by representatives of all regions, as well as by government experts, representatives of the United Nations Secretariat and observers from specialized agencies and the International Committee of the Red Cross (ICRC), those drafts had been combined initially into the consolidated negotiating text, contained in the report of the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel (A/49/22, annex I), and subsequently into the text contained in the annex to the Working Group's report.

3. He noted that, notwithstanding the short time in which the draft instrument had been developed, in response both to the request contained in General Assembly resolution 48/37 and to the inherent urgency of the task, it was a highly professional document. That expeditious preparation had been made possible by the solid foundation of the draft Convention, which was firmly based on existing international instruments. He therefore foresaw no obstacle to its adoption by the Committee.

4. The text synthesized the approaches contained in the drafts prepared by New Zealand and Ukraine, the first providing for individual responsibility for those who attack United Nations personnel and the second endeavouring to consolidate aspects of existing law and practice dealing with the security and safety of such personnel. The final text had been arrived at through a process of difficult compromise, yet differed only slightly from the consolidated negotiating text developed by the Ad Hoc Committee at the end of its August 1994 session. The differences consisted of a few points relating to definitions and

the scope of application of the convention; technical changes in its criminal law parts; and certain additions, including provisions on compensation, on the rights of States to withdraw personnel and on meetings to review the implementation of the convention.

5. As it stood, the draft Convention essentially contained three types of provisions: those dealing with criminal law; those dealing with the rights and obligations of the United Nations and associated personnel and of host and transit States; and those defining the scope of application of the convention.

6. The criminal law provisions, contained in articles 9 to 18, were broadly based on a number of anti-terrorist conventions, including the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the 1979 International Convention against the Taking of Hostages and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and were designed to ensure the effective punishment of those responsible for attacks on United Nations and associated personnel by guaranteeing prosecution or extradition followed by appropriate penalties, thus eliminating safe havens for such attackers. Throughout the negotiations, efforts had been made to ensure that the provisions of the convention were consistent with those of previous conventions with the same legal effect, from the standpoint of international criminal law.

7. The provisions aimed at consolidating and developing existing law, contained in articles 3 to 8 and 20 to 21, covered obligations of certain States, United Nations personnel and the United Nations itself and were extensively based on existing law and practice as reflected in a number of status-of-forces agreements. Thus, host States were obliged to ensure the safety of United Nations personnel; transit States must facilitate the unimpeded transit of personnel and their equipment; United Nations personnel were obliged to respect the laws of the host and transit States; and the United Nations and host States were obliged to conclude status-of-forces agreements. Articles 20 and 21 contained savings clauses, establishing that nothing in the convention affected the applicability of humanitarian law and human rights standards to and by United Nations and associated personnel; the rights and obligations of States regarding the consent to entry of persons into their territory; the obligation of the United Nations to act in accordance with the terms of the mandate of a United Nations operation; the right of States to withdraw their personnel from such operations; the entitlement to appropriate compensation payable in certain situations attributable to peace-keeping service; and the right of self-defence.

8. Finally, the provisions establishing the scope of application and definitions, contained in articles 1 and 2, had proved the most difficult because they were very specific to the convention. As currently worded, the convention applied to all operations established with the purpose of maintaining or restoring peace and security, except enforcement operations in which personnel were engaged as combatants against organized armed forces and to which the law of international conflicts applied. The convention also applied to other operations where the General Assembly or the Security Council had declared

that there was an exceptional risk to the safety of personnel. Under those provisions, a broad range of personnel was covered.

9. While the draft Convention might not meet all the objectives of every delegation or concerned institution, it was a clear improvement over any existing provisions, offering a delicately balanced package of rights and obligations made possible by the spirit of compromise which had informed the negotiating process. Given the sound basis of international law underlying many of the provisions of the text, the open character of the negotiating process and the limited number of changes made to the comprehensive negotiating text, he hoped that the draft Convention would be adopted by the Committee.

10. Crown Prince FREDERIK (Denmark), speaking on behalf of the five Nordic countries, said that the Nordic countries had always taken a strong interest in the elaboration of an international convention on the safety of United Nations and associated personnel. Those countries currently had more than 3,900 soldiers deployed in the former Yugoslavia and were deeply convinced of the urgent need for further measures to protect United Nations and associated personnel.

11. The draft Convention before the Committee represented the first set of basic rules for the protection of United Nations personnel operating in areas of armed conflict as well as of criminal law provisions establishing universal jurisdiction for the prosecution and punishment of individuals responsible for attacks on United Nations and associated personnel. The accomplishment of that task within one year after the adoption of the relevant decision at the forty-eighth session demonstrated how swiftly the United Nations could act when political will and legal expertise worked together in a constructive spirit.

12. The Nordic countries attached particular importance to the interpretation given during the negotiating process to the term "the Secretary-General of the United Nations", contained in article 1 (b) (ii), which also covered other parts of the United Nations system such as funds, programmes and offices, notably, the Office of the United Nations High Commissioner for Refugees (UNHCR). In addition, they stressed the need to ensure that there was no gap between the application of the convention and the rules of international humanitarian law applicable during armed conflict.

13. While he conceded that the convention might still have some deficiencies, its main thrust, namely, that attacks against or other mistreatment of personnel acting on behalf of the United Nations were unjustifiable and wholly unacceptable, was clearly stated in precise legal terms. Problems arising with regard to the application of the convention could be addressed during the review meetings provided for in article 23, included on the initiative of the Nordic countries. The protection of United Nations personnel was an ongoing process, in which the convention before the Committee represented a major step forward, and the Nordic countries therefore strongly recommended its adoption and opening for signature during the current session of the General Assembly.

14. Mr. van BOHEMEN (New Zealand) said that it had been at New Zealand's initiative that item 141 had been placed on the agenda of the Sixth Committee the previous year. His delegation was thus especially pleased that, 12 months later, the Committee had before it the text of the draft Convention (A/C.6/49/L.4, annex) that had been negotiated over the intervening year.

15. It had been at New Zealand's insistence that the working groups, and particularly the Ad Hoc Committee, had been thrown open to the participation of all States, thus marking a departure from the Sixth Committee's previous practice of establishing bodies of limited composition to conduct such negotiations. New Zealand had taken the view that it was essential that all States required to finance peace-keeping and other United Nations operations and which might be asked to provide personnel for such operations should have the opportunity to be fully engaged in the negotiations. The draft before the Committee proved the efficacy of that negotiating method.

16. The fact that a draft Convention had been negotiated in the brief space of one year was attributable to three factors. First, there had been no doubt as to the urgency of the task: in 1993, 201 peace-keeping personnel had been killed while on service with the United Nations; in the first 10 months of 1994, 126 peace-keeping personnel had already been killed; and in the period from 1 July 1993 to 17 September 1994, 18 United Nations personnel engaged in non-peace-keeping operations had been killed. Such a death rate for persons acting in the cause of peace and on behalf of the international community was unacceptable. The rapid negotiation of the draft Convention showed that member States recognized and accepted a responsibility to do something to discourage that carnage and to bring to justice those guilty of such outrages.

17. The second factor was that the Ad Hoc Committee had had a single working document before it at the start of its deliberations. While difficult to achieve, the merging of the separate New Zealand and Ukrainian draft conventions had paid a real dividend.

18. Thirdly, the subject-matter addressed by the convention had deliberately been kept within a reasonably narrow focus and had been dealt with largely on the basis of existing precedents. The convention should be regarded as an extension of an already well-established body of rules, and as an incremental rather than a radical step forward in law-making. Those concerned at the rapid pace of the negotiations could rest assured that the outcome was fully in accordance with an established body of international law and would require no fundamental reconsideration by States of the laws and principles they had already applied to similar circumstances.

19. The most difficult issue in the negotiations had undoubtedly been the question of the scope of the convention. Which operations and which personnel should be covered? New Zealand's fundamental position had been that those most in need must be protected. That meant first of all the peace-keeping personnel and persons associated with peace-keeping operations. Within that category there was a special-risk category of persons operating in places such as Somalia, where there was no Government to provide protection, or Bosnia and

Herzegovina, where there were large areas over which the host Government was unable to exercise effective control. It had been in order to ensure the protection of those persons that his delegation and others had opposed proposals that the convention's coverage should be limited to consent-based operations under Chapter VI of the Charter. His delegation was satisfied that its position was reflected in the definition of "United Nations operation" contained in article 1 (c). At the same time, it felt that the references to consent in the preamble and article 20 provided an appropriate reflection of the importance of obtaining the consent and cooperation of host States in the performance of most peace-keeping operations.

20. Recognizing that those seeking to disrupt United Nations operations were as likely to target other United Nations and agency personnel in the vicinity of a peace-keeping operation as those actually engaged in the operation itself, New Zealand had considered that all such personnel operating in the area of an operation had to be covered. That aim had been achieved in article 1 (a) (ii). In addition, it had agreed strongly with the recommendation made by the Secretary-General and the agencies that any protections extended to a peace-keeping operation should also extend to contractual and non-governmental personnel carrying out activities in support of such an operation. His delegation was satisfied with the definitions of "United Nations personnel" and "associated personnel" contained in article 2 (a) and (b) in that regard.

21. There had been considerable discussion as to whether the scope of the convention should extend beyond those categories of operations and personnel. New Zealand would have supported extending the convention to all United Nations and agency personnel required to operate away from an established headquarters. However, it had recognized the force of the argument advanced, that there had to be exceptional circumstances to warrant departing from the standard position that the security and protection of United Nations personnel were primarily the responsibility of the host State. According to that view, there was no justification for extending the unusual protections of universal jurisdiction to persons able to seek protection and redress from a host Government. The compromise contained in article 2 (c) (ii) struck a balance between those positions. The mechanism whereby the convention's protections could be extended to other operations where the Security Council or the General Assembly had declared that there was an exceptional risk to the personnel involved ensured that people in real need could be protected without compromising the principle that universal jurisdiction was an exceptional measure. However, in cases of doubt the Council and the Assembly should err on the side of protection and should be prepared to make pre-emptive declarations, rather than waiting until persons had actually been killed or injured.

22. With the assistance of the delegation of Ukraine, his delegation had prepared and sought to circulate the text of a draft resolution whereby the General Assembly would adopt the convention and open it for signature. The draft was essentially a procedural one, and was based on the earlier precedents of conventions adopted by the Sixth Committee. The preamble recalled the factual background to the negotiations and the work undertaken in the Ad Hoc Committee and the Working Group at the current session. Paragraph 1 used the

standard formulation for the adoption and opening for signature of a convention. Paragraph 2 urged States to take appropriate measures for the protection of United Nations personnel in their territory. Paragraph 3, in recognition of the responsibilities of the different organs and bodies of the Organization and of the incremental nature of the measures taken, recommended that the safety of United Nations personnel should be kept under continuing review; and the final operative paragraph underlined the importance attached to the speedy conclusion of a comprehensive review of compensation arrangements. The text of the convention itself would be annexed to the resolution. Following the precedents of the conventions dealing with internationally protected persons, hostages and mercenaries, it was proposed that the convention should be kept open for signature until the end of the following calendar year (31 December 1995); that it should enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval; and that denunciation should take effect one year following its notification to the Secretary-General. His delegation hoped that those provisions would not be controversial, and that the draft resolution could be adopted speedily, without a vote. The subject-matter was familiar to all, and delay would thus not be to the advantage of any delegation.

23. Mr. MOTSYK (Ukraine) said that, given the relative infrequency with which the Sixth Committee adopted international treaties, the forthcoming adoption of a draft international convention dealing with the safety and security of United Nations and associated personnel was an event of more than ordinary significance. The process that had begun with the merging of the separate drafts proposed by Ukraine and New Zealand had culminated in the formulation of the current text, which represented a compromise between those two different but complementary approaches.

24. His delegation had first expressed the view that there was a need for a legal instrument to protect United Nations and associated personnel at the 1993 session of the Special Committee on Peace-keeping Operations, following the death of one Ukrainian serviceman and the wounding of three others as a result of deliberate shelling in Sarajevo in July 1992. Since that date, a total of 10 Ukrainian servicemen had been killed and 44 wounded in peace-keeping operations, in most cases as a result of intentional attacks. In recent years, the contingents of other States had suffered comparably heavy losses. Over the whole period during which the United Nations had been involved in peace-keeping operations, more than 1,100 peace-keepers had been killed and several thousand wounded. Meanwhile, the perpetrators of what were often deliberate and cold-blooded murders could not be brought to justice, in the absence of an international legal mechanism for that purpose. The purpose of the draft Convention was to fill that lacuna, thereby considerably enhancing the safety of United Nations and associated personnel.

25. The draft Convention contained a number of other very important provisions, concerning, inter alia, the right of self-defence of those personnel; the duty of States parties to ensure their safety and security; the duty to release or return personnel captured or detained; privileges and immunities of military and police components of an operation; and respect by such personnel for the rules

and regulations of the host State. As well as filling a number of gaps regarding the status of United Nations and associated personnel, those provisions were also aimed at enhancing the effectiveness of peace-keeping operations.

26. In view of the escalating casualties among United Nations and associated personnel, it was important to adopt the draft Convention at the current session of the General Assembly and to open it immediately for signature and subsequent ratification. His delegation thus very much hoped that the draft resolution prepared by the New Zealand and Ukrainian delegations would be supported by all delegations of the Sixth Committee and of the plenary Assembly. An overwhelming majority of delegations had taken an extremely active part in the various stages of elaboration of the draft Convention, and the result was the best possible compromise text. Some delegations might have reservations regarding certain provisions of the text: his own delegation, for instance, was not entirely satisfied with the wording of subparagraph (c) (ii) of article 1. It would also have preferred to see the amendment to article 4 proposed by the delegation of Canada adopted. Nevertheless, the text before the Committee represented a balance between the interests of member States in terms of rights and obligations. His delegation thus called upon the Committee to adopt the text of the draft Convention by consensus. If the convention was adopted, Ukraine intended to sign it immediately and to begin preparations for its ratification.

27. Mrs. FERNANDEZ de GURMENDI (Argentina) said that there was an imperative need to supplement the existing international rules so as to enable the Organization to confront adequately the new challenges arising from its more active role in the maintenance of international peace and security. The ever more numerous, ambitious and complex operations established by the United Nations and the exponential increase in the number of military and civilian personnel assigned to them had, unfortunately, been accompanied by a disproportionate increase in the number of attacks against United Nations personnel. Her delegation therefore welcomed the completion of the draft Convention, which demonstrated the advantages of building up the corpus of international law through progressive additions to and improvements in existing norms.

28. On the one hand, the draft Convention reflected United Nations practice in the area of peace-keeping operations, as embodied in the status-of-forces agreements concluded between the Organization and host States. On the other hand, in terms of its enforcement machinery, the draft Convention was modeled on the anti-terrorist conventions concluded since 1973; like them, it embodied the obligation to extradite or prosecute, as well as the now standard provisions relating to the establishment of a universal jurisdiction.

29. The major challenge involved in preparing the draft Convention had been the definition of the problem to be solved. The determination of which operations and personnel should be covered by the draft provisions had, from the outset, been the most sensitive and time-consuming issue discussed by the Ad Hoc Committee and later by the Working Group. Because of the growing complexity of current peace-keeping operations and the multidimensional and sometimes changing

nature of their mandates, simple definitions based on a single parameter, such as the consent of the host State, were unfeasible.

30. In the course of the debate, it had become apparent that to limit the scope of the draft Convention to United Nations personnel assigned to peace-keeping operations, as initially envisaged, was overly restrictive. The question then arose as to whether other operations carried out by competent organs of the United Nations should be included and, if so, which ones. It had been necessary to strike a balance between various points of view. Her delegation believed that the compromise reflected in the text would make for the widest possible acceptance of the draft Convention by the international community. Accordingly, her delegation supported the recommendation of the draft Convention for adoption by the General Assembly and ratification by all States.

31. Mr. TAN (Singapore) said it was appropriate that the international community should put in place measures to minimize the dangers faced by United Nations and associated personnel acting as peace-keepers in troubled parts of the world. However, the legal framework within which United Nations peace-keeping forces operated was not always clear. In Somalia, Cambodia and the former Yugoslavia, assailants had been able to attack peace-keepers and aid workers with impunity, knowing that they could not be held legally accountable for their crimes. Accordingly, legal measures must form a part of the overall response to the problem. In that connection, the draft Convention which was before the Committee would send a message to the parties to a conflict that attacks on United Nations and associated personnel would meet with an appropriate response.

32. Safeguards had been built in to ensure fairness for all concerned. The provisions followed well-established international precedents and represented a compromise among various points of view. In view of the diversity of opinions expressed during the debate in the Ad Hoc Committee, that was the best that could be hoped for.

33. His country, despite its small size and limited resources, had participated in a number of peace-keeping operations by contributing military observers and police forces, and was always concerned about the safety of its personnel. The provisions contained in the draft Convention were not the only ones required to ensure safe and successful peace-keeping operations. It was also important for the United Nations and the host State to enter immediately into a status-of-forces agreement with a view to identifying, in accordance with international practice, their respective areas of criminal jurisdiction over military personnel assigned to United Nations peace-keeping operations.

34. Mr. Lamptey (Ghana) took the Chair.

35. Mr. MARTENS (Germany), speaking on behalf of the European Union and Austria, said that the draft Convention was a fair and balanced text which would contribute to better protection of United Nations and associated personnel. He noted with satisfaction that the principle of individual responsibility for

violation of the provisions of the draft Convention, which was of the utmost importance, had been accepted by all delegations.

36. Attacks on United Nations personnel were criminal acts. The draft Convention required all parties to establish jurisdiction over the crimes defined in article 9. Individual responsibility was further ensured by the incorporation of the principle "extradite or prosecute" which was already found in a number of widely accepted international treaties.

37. The protection of United Nations and associated personnel was further guaranteed by the obligation imposed on States to take practical measures, including mutual information, cooperation and assistance, to ensure the safety and security of such personnel.

38. The most difficult and controversial issue had been the scope of application of the draft Convention. The European Union and Austria welcomed the fact that the draft Convention covered not only United Nations but also associated personnel, including persons assigned by intergovernmental and non-governmental organizations to carry out activities in support of a United Nations operation.

39. The Working Group had also dealt with another crucial issue, namely, the relationship between the draft Convention and humanitarian law. It was important that the future convention should not undermine widely accepted principles of humanitarian law. Accordingly, the delegations on whose behalf he spoke noted with satisfaction that the Working Group had found a formula which drew a clear line between the application of the future convention and the law of international armed conflicts. The draft Convention did not apply to enforcement actions under Chapter VII of the Charter to which the law of international armed conflicts applied.

40. Due account had also been taken of the concern of States which had wished to see the consent of the host State included as a requirement. Draft article 20 reaffirmed that the future convention did not, in and of itself, authorize United Nations operations and thus could not replace the consent of the host State whenever that became necessary under international law.

41. The delegations on whose behalf he spoke urged the immediate and unanimous adoption of the draft Convention by the Committee and the General Assembly.

42. Mr. SEGER (Observer for Switzerland) said that the draft Convention was a success overall and deserved to be recommended for adoption by the General Assembly. His delegation was convinced that the future convention would be a useful and viable instrument. In particular, Switzerland noted with satisfaction that a clear solution had been found to the issue of the scope of application of the draft Convention and its relationship to international humanitarian law.

43. The sole criticism which could be made of the draft text related to its article 1 (c) (ii), which contained criteria for the application of its provisions to operations other than those for the purpose of maintaining or restoring international peace and security. That provision appeared to be problematical; for example, it was unclear how the Security Council's power to declare the draft Convention applicable to operations which did not fall within the specific framework of maintaining or restoring peace and security could be justified. On the other hand, if it was preferred that such operations should be dealt with by the General Assembly in application of the draft Convention, the question arose as to whether the Assembly was really structured in a way enabling it to take such a decision with the requisite speed. Only the test of practice would determine whether or not his delegation's initial fears were justified; in the meantime, it was to be hoped that consistent practice would be established. Despite those reservations, his Government was prepared to give favourable consideration to ratifying the draft Convention following its adoption by the General Assembly.

44. With regard to article 17 (Fair treatment), his Government wished to place on record its interpretation of the article, namely, that it did not confer on alleged offenders regarding whom investigations or proceedings were being carried out any additional rights beyond those already guaranteed in Swiss national legislation. Accordingly, his country would apply article 17 in accordance with its customary practices concerning investigations and proceedings which, moreover, were fully in keeping with the provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

45. Ms. DAUCHY (Secretary of the Committee) said that the Bahamas had joined the sponsors of draft resolution A/C.6/49/L.6.

The meeting rose at 12.10 p.m.